# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

***Cr.Appeal No.351 of 2000***

***Decided on:October 26, 2007.***

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**State of H.P.** **…Appellant.**

***VERSUS***

**Kamal Dev** **….Respondent.**

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***Coram***

***The Hon'ble Mr.Justice Kuldip Singh, Judge.***

***Whether approved for reporting?[1] No***

**For the Appellant:** **Mr.M.L.Chauhan, Addl.A.G.**

**For the respondent:** **Mr.N.K.Thakur, Advocate.**

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***Kuldip Singh, Judge (Oral)***

The State is in appeal against the judgment of acquittal recorded by learned Additional Chief Judicial Magistrate, Court No.1, Una dated 11.1.2000 in case No.73-II-96/94 acquitting the respondent under Sections 279, 337 and 338 I.P.C.

**2.** The facts in brief are that complainant Gurdeep Singh was riding cycle on 9.12.1993 from Ghaluwal to Jhalera, Datta Ram was sitting on the carrier of the cycle. At about 7.50 P.M. when Gurdeep Singh crossed Swan bridge, a truck bearing No. HPG-2923 being driven rashly and negligently by respondent came from the opposite side and hit the cycle as a result of which Gurdeep Singh and Datta Ram fell down and Datta Ram sustained injuries over his forehead.

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***Whether the reporters of the local papers maybe allowed to see the judgment?Yes***

The matter was reported to the police and accordingly FIR No. 523 of 1993 was registered at Police Station, Una. The case was investigated and a challan was put up in the Court against the respondent, notice of accusation was put to the respondent under Sections 279, 337 and 338 IPC to which he pleaded not guilty and claimed trial. The prosecution examined twelve witnesses and the evidence of the prosecution was closed by order of the Court on 22.11.1999. The statement of respondent was recorded under Section 313 Cr.P.C., he denied the case of the prosecution and pleaded his innocence, but the respondent did not lead any defence evidence. The learned trial Court after conclusion of the trial, acquitted the respondent as noticed above, hence this appeal.

**3.** I have heard the learned Additional Advocate General for the State and Mr.Naresh Thakur, Advocate representing the respondent. The learned Additional Advocate General has submitted that the trial Court has mis-interpreted the material on record and erred in acquitting the respondent. He has submitted that the prosecution has proved the case against the respondent. The learned counsel representing the respondent has supported the impugned judgment. According to him, it has not been proved on record that respondent was driving the truck at the time of accident, nor the involvement of truck in the accident has been proved.

**4.** There is no independent eye witness of the occurrence. In this situation, the statements of Gurdeep Singh and Datta Ram are important. The prosecution has examined Gurdeep Singh as PW1.

He has stated that on 8/9-12-1993 at about 7.30 P.M. he was going on cycle from Saloh to Jhalera and Datta Ram was also sitting on the cycle. A truck came from the opposite side. He did not remember the registration number of the truck. The truck struck against the cycle. The speed of the truck was fast. Datta Ram received injuries. The accident took place due to the negligence of the driver. He inquired the number of the truck from Toll Tax barrier, which was HPG-2923. PW6 Datta Ram has stated that on 9.12.1993 he was going from Ghaluwal to Jhalera while sitting on the carrier of the cycle of Gurdeep. At about 7.30 P.M. when they crossed Swan bridge, a truck came from the opposite side and the rear side of the truck struck against his forehead and he fell down and became unconscious. He was taken to Una and then to PGI and he regained consciousness on the third day. The truck was on the wrong side and the cycle was on the right side. PW9 Tarsem Lal is the owner of truck No. HPG-2923 and has stated that respondent was driver of that truck and on 9.12.1993 he had taken the truck from Nangal to Gagret loaded with fertilizer. He came to know later on that the truck was involved in the accident. PW11 Surti Ram is the Investigating Officer. He recorded the statement Ex.PW1/A of Gurdeep Singh. In cross-examination he has stated that Gurdeep Singh did not disclose the name or other particulars of the truck driver. Datta Ram also did not disclose name or other particulars of truck driver. PW12 Ravinder Nath has stated that he was working on Jhalera barrier. On 9.12.1993 truck No. HPG-2923 crossed the barrier and proceeded

towards Ghaluwal and to this effect receipt No. 1519 was issued. The other prosecution witnesses are not material for the decision of the case.

**5.** A perusal of statements of PW1 Gurdeep Singh and PW6 Datta Ram would show that they have not proved that respondent-accused was driving the truck at the time of accident. They have also not proved involvement of the truck in the accident. The PW1 took registration number of the truck from toll tax barrier. There is nothing on record regarding distance from toll tax barrier to the place of accident. It is not the prosecution case that only truck HPG-2923 crossed toll tax barrier on that date towards place of accident at the relevant time. These witnesses have not even identified the respondent in the Court. As per the prosecution case the accident took place at about 7.50 P.M. on 9.12.1993. There is nothing on record that at the place of accident there was some provision of light to identify the truck and the driver, who was driving the truck. PW 1 has stated that after the accident the driver fled away with truck from the scene of occurrence. It has come in the statement of PW11 Surti Ram, Investigating Officer that PW1 and PW6 did not disclose the name of the driver or his particulars to him during investigation. The statements of PW9 Tarsem Lal and PW12 Ravinder Nath that truck HPG-2923 crossed the Jhalera barrier are not sufficient to connect the respondent with the accident. The respondent in his statement under Section 313 Cr.P.C. has denied that he was driving truck HPG-2923 at the time of accident. In these circumstances, it was for the

prosecution to prove that accident took place when respondent was driving the truck in question. The prosecution has miserably failed to prove the case against the respondent. The learned Additional Chief Judicial Magistrate has rightly appreciated the material on record and has taken a possible view from the material on record. The prosecution has failed to make out any case for interference.

**6.** Accordingly, the appeal is dismissed.

***October 26, 2007.*** ***( Kuldip Singh ), J.***

**(vs)**